

# IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

Original Application No. \_\_\_\_\_ of 20 \_\_\_\_\_ DISTRICT \_\_\_\_\_  
..... Applicant/s

(Advocate .....

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram,  
Appearance, Tribunal's orders or  
directions and Registrar's orders

Tribunal's orders

**O.A.446/2016**

**Shri M.G. Kale** ... Applicant  
**V/s.**  
**The State of Mah. & ors.** ... Respondents

Heard Smt. Punam Mahajan, the learned Advocate for the Applicant and Smt. K.S. Gaikead, the learned P.O. for the Respondents.

The learned P.O. requests that the matter be kept back ~~for~~ the Affidavit-in-reply. Regard being had to the state of my Board today and remaining two days of vacation, the interim order is extended till next date and this OA stands adjourned before the Bench taking up such matters on 16<sup>th</sup> June, 2016. Hamdast.

Sd/-

(R.B. Malik)  
Member (J)  
01.06.2016

(skw)

DATE: 16/6/16

CORAM:

Hon'ble Shri. RADU VAGARWAL  
(Vice-Chairman)

Hon'ble Shri. R. S. MALIK (Member)

APPEARANCE:

Punam Mahajan

Attorney for the Applicant

K.S. Gaikead

C.O. / P.O. for the Respondents

Adj. To 16/6/16. Hamdast.

16/6/16  
17:30 hrs  
for DCPMS.  
Bhukar  
16/6/16  
J.P.M.

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
ORIGINAL APPLICATION NO.476 OF 2014**

Shri Sunil B. Gidde

..Applicant

Versus

State of Maharashtra & Ors.

..Respondents

Smt. Punam Mahajan – Advocate for the Applicant


Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : R.B. Malik, Member (J)

DATE : 1<sup>st</sup> June, 2016

**ORDER**

1. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.
2. Smt. Gaikwad, Ld. PO is being instructed by Shri Kiran Upasani, Law Officer, office of DGP, Mumbai.
3. Issue notice returnable on 16.6.2016.

  
\_\_\_\_\_

4. Tribunal may take the case for final disposal at this stage and separate notice for final disposal need not be issued.

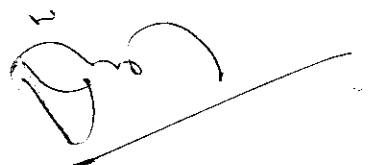
5. Applicant is authorized and directed to serve on Respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

6. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

7. The service may be done by hand delivery/ speed post/courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file affidavit of compliance and notice.

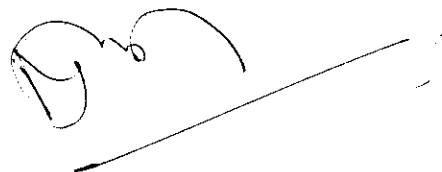
8. The applicant by an order dated 24.5.2016 herein impugned came to be transferred from Anti Corruption Bureau, Sangli to Gadchiroli Range. The issue as of today is as to whether a case is made out for interim relief.

9. I must make it very clear that I am deeply conscious of the legal position that the various segments of government

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servant's service conditions including transfers are such that a judicial forum will be extremely circumscribed and would intervene or it interfere with caution. However, it is equally true that pursuant to the law laid down by the Hon'ble Supreme Court in **PRAKASH SINGH VERSUS UNION OF INDIA, 2006(8) SCC 1**, the State has now codified this aspect of the service condition and, therefore, a judicial forum is authorized by law and is in duty bound to scrutinize the actions of the administration so as to make sure that the impugned action does not fall foul with the law. That is not something as a matter of grace or choice but it is a judicial duty.

10. Now, in the above background it would appear from the documents produced for my perusal that the applicant who was not due for transfer came to be transferred on the basis of what has been mentioned as "work not satisfactory". When this OA appeared before me yesterday i.e. on 31.5.2016 this aspect of the matter was discussed. Now, today the Ld. PO has submitted for my perusal a report apparently submitted by the Dy. Commissioner of Police/Superintendent of Police, ACB, Pune. For the sake of facility the entire communication needs to be reproduced (in Marathi):



“अतिगोपनीय

प्रति,

मा. महासंचालक,  
लाचलुचपत प्रतिबंधक विभाग,  
महाराष्ट्र राज्य, मुंबई.

जा.क्र.पोउपआ/पोअधी/लालुप्रवि/स्टेनो/४४/२०१६. पुणे, दिनांक :- ३०.०३.२०१६

विषय :- लाचलुचपत प्रतिबंधक विभाग, पुणे परिक्षेत्र अधिकाऱ्यांचे पोलीस दलात

उपरोक्त विषयास अनुसरून सादर करण्यात येते की, लाचलुचपत प्रतिबंधक विभाग, पुणे परिक्षेत्राच्या आस्थापनेवर सध्या कार्यरत असलेले खालील अधिकारी हे त्यांच्या नियमित कामात विशेष रस / उत्साह घेवून काम करीत नाहीत. तसेच त्यांच्यावर सोपविण्यात आलेली कामगिरी बजावण्यात देखील ते निरुत्साह दर्शवितात. ब्युरोचा नावलौकिक वाढेल अशा दृष्टीने कामगिरी करत नसून त्यांचे कामात ते उदासीय असल्याचे दिसून येते. त्यामुळे संबंधीत युनिटचे कामावर विपरीत परिणाम होत असल्याचे त्यांना पोलीस दलात परत करण्याची शिफारस आहे.

१. श्री. एस.बी. शेटे, पो.उपअधी (ए.ट. पदोनत्तीने), ला.लु.प्र.वि., पुणे
२. श्रीमती पद्मा कदम, पो.उपअधी, (ए.ट. पदोनत्तीने), मुंबई, संलग्न कोल्हापूर, ला.लु.प्र.वि.,
३. श्रीमती अर्चना बोदडे, पो.नि., ला.लु.प्र.वि., पुणे
४. श्री. सुनिल भिमराव गिडडे, पो.नि., ला.लु.प्र.वि., सांगली
५. श्री. व्ही.बी. सिद, पो.नि., ला.लु.प्र.वि., सोलापूर

तसेच अ.क्र.५ श्री.व्ही.बी. सिद, पो.नि., ला.लु.प्र.वि., सोलापूर यांचेबाबतीत सादर करण्यात येते की, त्यांचा बहुतांश कालावधी हा सोलापूर जिल्ह्यातीलच कार्यकाळ असल्याने त्यांचा स्थानिक भरपूर आहे. त्यामुळे त्यांचे कर्तव्यावर विपरीत परिणाम होत आहे. त्यामुळे त्यांचेकडून अपेक्षित कामगिरी होवू शकत नसल्याचे निदर्शनास आले आहे.

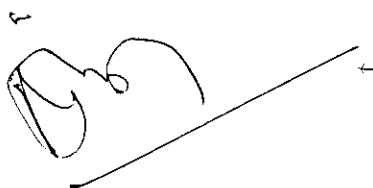
तरी उपरोक्त अधिकाऱ्यांना पोलीस दलात परत पाठविण्याची शिफारस आहे. तसेच त्यांचे रिक्त होणाऱ्या पदांवर दुसरे नविन अधिकारी नियुक्ती होणेस विनंती आहे.

(शिरीष सरदेशपांडे)  
पोलीस उपआयुक्त / पोलीस अधीक्षक  
लाचलुचपत प्रतिबंधक विभाग, पुणे”



11. From the record as of today, first of all it cannot be conclusively said that it was this precise communication which was before the board when it took up the decision in question. Assuming without holding if it was there before them even then it will have to be conclusively established that regard being had to the generality of the language of the same though the judicial forum will not rush into the area reserved for the administration just for the asking as already mentioned at the outset but there is a certain judicial duty conferred on this Tribunal which it cannot avoid to diligently perform. Therefore, it will have to be closely examined as to whether material such as it is could have been held to be sufficient for the establishment to act in the manner that they did. As of now existence of material itself is not free from clouds. The sufficiency thereof will then arise.

12. Further Smt. Mahajan, Ld. Advocate for the applicant invites reference to GR dated 8.12.2009 which according to her provides that the posting in the Naxal affected areas which Gadchiroli happens to be should be as far as possible be made from the officers in the age group of 23 to 40. A deeper consideration of this aspect of the matter has got to be deferred but then even if one were to proceed on the basis that there was no express embargo on posting of the officers post 40 to Naxal affected areas the issue is as to whether the board addressed itself to this aspect of the matter at all and as far as

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this Tribunal is concerned it is this fact which must be scrutinized.

13. Now there are arguable points which by themselves in all circumstances may not lead into making interim order but in the context of the present facts I am quite clearly of the view that case for interim relief is constituted. The OA itself could be heard and disposed off finally provided the respondents file their affidavit in reply promptly on the next date. Even there apart from liberty is reserved for the respondents to seek any modification or variation or vacation of this order with 48 hours advance notice to the applicant.

14. Ld. PO informs that the applicant has been relieved. Even if that be so the very nature of the functioning of the administration as well as the judicial forum is such that a straight jacketed and mathematically accurate course of action may not be always possible. Therefore, there is no other go but to clarify that when the impugned order is stayed it envelopes within itself a direction to restore the applicant within 3 days to the post he came to be transferred from.

15. S.O. to 16.6.2016. Ld. PO waives service of notice. Hamdast.

Sd/-  
**(R.B. Malik)**  
**Member (J)**  
**1.6.2016**

01.06.16

Dictation taken by: S.G. Jawalkar.

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